

## **REMARKS**

In the present application, claims 1-27 are pending. Claims 10-12, 19, 20 and 25-27 were withdrawn from consideration based upon a provisional election made via telephone on March 2, 2006. In addition, claims 1-9, 13-18 and 21-24 stand rejected under either 35 U.S.C. §§ 102 or 103. In addition, claims 4, 7, 9, 13, 15 and 24 were specifically rejected under 35 U.S.C. § 112 for various reasons. Lastly, a provisional obviousness-type double patenting rejection has been applied to claims 1, 2, 7 and 13-16.

### **I. The Claimed Invention**

In the amendments above, the claims have been modified to further specify the claimed invention. More specifically, the amended claims specify how the flexible package of the present invention includes both a gusseted bottom portion, and a non-gusseted upper portion. Further, the package includes a smooth, continuous transition between these two portions.

As discussed in the specification, one object of the invention is to provide simplified package configuration at the upper end thereof. By having this simplified structure, efficient manufacturing is achieved. Additionally, the attachment or formation of other structures to the upper end is easily accomplished. In the particular embodiment described, the reclosable sealing device is one example of an additional structure that may be added or formed. The package structure at the top is made up of only two sheets of material – a front sheet and a back sheet. Most importantly, there are no gussets in the upper portion, nor are there complex side structures of any type.

### **II. Claim Rejections under 35 U.S.C. §§ 102 and 103**

As referenced above, claims 1-20 have been rejected under 35 U.S.C. §§ 102 and 103 as anticipated or made obvious by U.S. Patent No. 5,788,378 (Thomas). More specifically, the Examiner simply states that claims 1, 3-6, 8, 9, 13-18, 21, 23 and 24 are anticipated by Thomas. Additionally, claims 2, 27 and 22 were said to be made obvious in light of Thomas. As amended, the Applicant asserts that the claimed invention is now patentable over Thomas.

Looking specifically at the package of Thomas, it is clear that complex structures and seals are required in order to achieve the reclosable stand up package features. This is precisely the type of complication that the present invention is trying to avoid. As shown in Fig. 3 of Thomas (and the related discussion) the process of forming the package starts by

creating cut-outs (or corner reliefs) 122 in the web of material. Through further processing and sealing, the box-like structure of the Thomas package is formed, however special consideration must be made for the discontinuity created by cut-outs 122.

The addition of a resealable feature to Thomas also requires further complications. First, the package itself must be configured to have "Tabs" formed on the front and rear sides. In the forming process, these tabs must be further manipulated so that additional structures can be added. Next, the reclosing mechanism must be attached to these tabs.

While the reclosing feature is added to the "tabs" with relative ease, the package formation is not complete at that point. Because cut-outs were created in Thomas, openings exist in the sides of the packages, which must be dealt with. To close these openings, additional seals must be formed at the top of the package. These seals are "T" or "Y" shaped and involves panels that are situated at various angles with respect to one another. As mentioned above, this makes for a more complex package structure and more complex operations during the manufacturing process.

The present invention avoids these shortcomings by providing a very simplified structure. As claimed, no gussets exist in the upper portion of the package. The opening (or upper portion) is made up of only the front and back walls positioned adjacent one another. Further, the package has a smooth transition between this non-gusseted portion and the gussets at the bottom of the package. This is significantly different than any of the identified references.

### **III. Previous Restriction/Election Requirements**

As mentioned above, a restriction requirement was made in the present application. The claims of Group I (claims 1-9, 13-18 and 21-24) were provisionally elected via phone conversation with the Examiner. Applicant hereby confirms this election, and cancels the non-elected claims.

### **IV. Drawing Objections**

The drawings are objected to under 37 CFR 1.83(a) for not showing every feature specified in the claims. More specifically, the "multi-layered film" (claims 2 and 22), the "reclosable device being a zipper lock" (claim 5), and the reclosable device being a slider (claim 6) were indicated to be lacking from the figures. In response, Applicant submits the enclosed drawing amendments. More specifically, Fig. 5 has been amended to show the multi-layered film as used in the present application. Additionally, Figs. 13 and 14 have been added to illustrate a slider-type seal, and a zipper-lock seal, as well known by those

skilled in the art. Further, appropriate amendments to the specification have been made to incorporate these modified drawings. Applicant requests the Examiner's approval of these amendments.

#### **V. Provisional Double Patenting Rejection**

Applicant makes note of the Examiner's provisional double patenting rejection. Upon allowance of either this application or the related application, Applicant will respond to this rejection at that time.

#### **VI. Rejections under 35 U.S.C. § 112**

In the Office Action, claims 4, 7, 9, 13, 15 and 24 have been rejected under 35 U.S.C. § 112 for various reasons. In response, Applicant presents the following comments related to the relevant claims.

Claim 7 was rejected under 35 U.S.C. § 112 due to an alleged failure of the specification to show the manufacturing of an easy snap mechanism with a gusseted package where no gussets are required on the upper portion. In response, Applicant directs the Examiner to Figs. 1-7 and the related text. Specifically, Fig. 7 shows the easy snap structure in detail. Figs. 1-6, thus illustrate this easy snap feature as existing in the actual package. In each of these Figs. 1-6, the package shown clearly lacks gussets at the upper portion where the easy snap mechanism exists. Further, the package illustrates gussets in the lower portion of this package. In light of these figures, and the related discussion, Applicant submits that this configuration is very clearly shown.

In addition to the rejection outlined above, claims 4, 9, 15 and 24 were rejected under 35 U.S.C. § 112 because it was allegedly unclear where the "continuous portion thereof" was located. Further, it was apparently unclear how the front and rear walls could have longitudinal edges joined together when these walls are separated by the sides. In response, claims 4, 9, 15 and 24 have been amended to more clearly state the nature of the claimed elongate seal.

Lastly, claim 13 was rejected under 35 U.S.C. § 112 because "the web" lacked antecedent basis. Further, the claim was stated as ambiguous because it reported to be a product and an apparatus for production in the same claim.

In response, claim 13 has been amended to establish antecedent basis for the web. In addition, the Applicant asserts that claim 13 simply provides a product claim outlining various limitations to the product which are formed due to the manufacturing process thereof. This claim structure is clearly permitted and is an appropriate method of claiming a

particular device. See, *Smithkline Beechan Corporation v. Apotex Corporation*, 403 F.3d 1331 (Fed. Cir. 2006)

#### CONCLUSION

In light of the foregoing comments, Applicant submits that all pending claims are allowable. Applicant requests that these claims be passed to issuance.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7387. If any fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Reference No. 5544-306).

Respectfully submitted,

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